Supreme Court, U.S.
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No. 99-324

IN THE
Supreme Court of the United States

VALERIE COLE,

Petitioner,

v.

VINCENT TULLY, M.D. and
WAYNE MEMORIAL HOSPITAL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE PENNSYLVANIA SUPERIOR COURT

BRIEF IN OPPOSITION FOR RESPONDENT VINCENT TULLY, M.D.

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QUESTION PRESENTED FOR REVIEW

Has the Petitioner failed to set forth compelling reasons for the grant of certiorari to determine the constitutionality of the two-year statutes of limitations provided for in 12 P.S. § 34 (now repealed) and 42 Pa. C.S. § 5524 (now repealed) as applied to minors, where the decision of the Pennsylvania courts in this case and similar cases do not conflict with decisions of this Honorable Court or the highest courts of other states on an important federal question, and where the application of said statutes neither deprive Petitioner of her right to procedural or substantive due process nor provide for the unequal distribution of benefits or imposition of burdens?

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STATEMENT OF THE CASE

A. Procedural History

The Petitioner/Plaintiff, Valerie K. Cole [hereinafter Petitioner], commenced a medical malpractice action against Respondents/Defendants, Vincent Tully, M.D. and Wayne Memorial Hospital [hereinafter Respondents unless otherwise indicated], in the Wayne County Court of Common Pleas with the filing of a Praecipe for Writ of Summons on February 5, 1997. After the close of pleadings, counsel for all parties submitted a Stipulation of Facts to that court on December 10, 1997.

On the basis of the above-referenced Stipulation of Facts, Respondents moved for summary judgment. Respondents' respective Motions for Summary Judgment were granted by the Honorable Brendan J. Vanston, President Judge of the 44th Judicial District, Specially Presiding, on June 3, 1998. Petitioner subsequently filed a Post-Trial Motion, or in the alternative, Motion for Reconsideration on June 11, 1998. Judge Vanston denied Petitioner's motion by Order dated June 12, 1998.

Petitioner appealed from both the grant of Respondents' Motions for Summary Judgment and the denial of her Post-Trial Motion, or in the alternative, Motion for Reconsideration. The Petitioner's appeal from the Post-Trial Motion, or in the alternative, Motion for Reconsideration, was quashed *sua sponte* by the Superior Court of Pennsylvania by Order dated August 3, 1998.

The Superior Court of Pennsylvania affirmed the Order of the Wayne County Court of Common Pleas granting

Respondents' respective Motions for Summary Judgment with an Order dated January 13, 1999. On February 8, 1999, Petitioner filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania. The Supreme Court of Pennsylvania denied Petitioner's Petition for Allowance of Appeal by Order dated May 24, 1999.

B. Factual History

In her Complaint, Petitioner alleged that Respondents were negligent on March 20-21, 1977, when she was hospitalized as an infant. She alleged that Respondents' negligence caused her to become dehydrated and suffer a stroke, which led to physical disabilities and deformities. Respondents denied all liability and contended that they caused no injury to Petitioner.

The following facts were stipulated to by the parties. Petitioner was born on February 17, 1977. When Petitioner was an infant, on March 20, 1977, she was taken to the emergency room of Respondent Hospital by her mother due to persistent diarrhea and vomiting and was examined there by Respondent, Dr. Tully. Petitioner was admitted to Respondent Hospital from March 20, 1977 to March 28, 1977.[1] Petitioner's parents were her legal guardians throughout her minority, and until she reached the age of eighteen on February 17, 1995. Petitioner's mother was made aware during the Petitioner's hospitalization of March 20-28, 1977, that the Petitioner, then an infant, may have sustained brain damage and possible physical injuries, disabilities, and deformities due to the dehydration which occurred during this hospitalization.

1. It is during this admission that Petitioner alleges Respondents' negligence was committed.

The parties further stipulated that by May 1977 at the latest, Petitioner's parents knew that Petitioner, then a minor, had been injured and that her injuries may have been the result of Respondents' conduct. No suit was filed against Respondents on behalf of Petitioner during her minority.

All facts set forth by Petitioner in the Factual History portion of the Statement of Facts in her Petition other than those stipulated to by the parties hereto are legal conclusions.

REASONS FOR DENYING THE WRIT

I.

PETITIONER HAS FAILED TO SHOW COMPELLING REASONS WHY THIS HONORABLE COURT SHOULD GRANT CERTIORARI IN THIS CASE.

Pursuant to this Honorable Court's Rules regarding jurisdiction on writ of certiorari,

> [r]eview on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> > (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that

> conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this court.

See Rules of the Supreme Court of the United States, Rule 10.

In the instant case, Petitioner has failed to show a conflict between the circuit courts of the United States on the issue in question. She has also failed to show a conflict between a circuit court and a state court of last resort on an important federal question. Petitioner has further failed to show a conflict between state courts of last resort or between a state court of last resort and a circuit court on an important federal question. Nor has Petitioner shown a conflict between a state court of last resort and this Honorable Court with regard to an important federal question. Petitioner has failed to show any other compelling reason for the exercise of this Honorable Court's certiorari jurisdiction in this case, and her Petition for Writ of Certiorari should therefore be denied.

II.

DECISIONS OF THE PENNSYLVANIA SUPERIOR COURT WITH REGARD TO THE CONSTITUTIONALITY OF A TWO-YEAR STATUTE OF LIMITATIONS AS APPLIED TO MINORS DO NOT CONFLICT WITH DECISIONS OF THE UNITED STATES SUPREME COURT.

In her Petition for Writ of Certiorari, Petitioner argues that the decision of the Pennsylvania Superior Court in the instant case as well as in the cases of *DeSantis v. Yaw*, 290 Pa. Super. 535, 434 A.2d 1273 (1981); *Petri v. Smith*, 307 Pa. Super. 261, 453 A.2d 342 (1982) and *Stein v. Richardson*, 302 Pa. Super. 124, 448 A.2d 558 (1982) conflict with this Honorable Court's decision in *Clark v. Jeter*, 486 U.S. 456, 108 S. Ct. 1910 (1988) with respect to the constitutionality of two-year statutes of limitations as applied to minors. The Pennsylvania Superior Court cases at issue, however, do not conflict with the decision in *Clark v. Jeter*. Rather, they are distinguishable on both their facts and the law.

In *Clark v. Jeter*, *supra*, this Honorable Court reviewed the issue of the constitutionality of the Pennsylvania statute of limitations applicable to *paternity actions*. The Plaintiff in *Clark v. Jeter* brought a paternity action ten years after her illegitimate daughter was born. *Id.* at 458, 1912. The trial court entered judgment against the Plaintiff on the grounds that the six-year statute of limitations period for the commencement of paternity actions had expired prior to the commencement of the suit. *Id.* at 458, 1913. The trial court also found that the statute of limitations was not violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Federal Constitution. *Id.*

The Plaintiff in *Clark* appealed to the Pennsylvania Superior Court. While her appeal was pending, Pennsylvania enacted an 18-year statute of limitations for paternity actions. The new statute, however, was not given retroactive effect. *Id.* at 459, 1913.

As this Honorable Court explained in *Clark v. Jeter*, when considering whether a statute is violative of the Equal Protection Clause, several levels of scrutiny are applied, depending upon the classification at issue:

> [a]t a minimum, a statutory classification must be rationally related to a legitimate governmental purpose. [citations omitted] Classifications based on race or national origin, [citations omitted], and classifications affecting fundamental rights [citations omitted] are given the most exacting scrutiny. between these extremes of rational basis review lies a level of intermediate strict scrutiny, which generally has been applied to discriminatory classifications based on sex or illegitimacy.

Id. at 461, 1914. In *Clark*, the statute of limitations in question was subject to intermediate scrutiny due to the fact that the class at issue was illegitimate children. *Id.* at 461, 1914. The Petitioner has failed to set forth any foundation indicating that the statutes at issue in this case are subject to intermediate scrutiny. Rather, the statutes of limitations at issue in this case are subject to a rational basis test. *Id.* at 461, 1914. The United States Supreme Court case of *Clark v. Jeter* is therefore inapposite.

In *Clark*, the statute of limitations at issue was six years and dealt with the time period within which a paternity action

may be brought. This Honorable Court determined that six years did not afford a reasonable opportunity to assist an illegitimate child with a paternity suit because a mother could be reluctant to bring a paternity suit against a natural father for fear of the effect it may have upon the relationship between the mother and the natural father. *Id.* Furthermore, the Court in *Clark* found that the advanced technology used to determine paternity virtually eliminated the chance that fraudulent claims of paternity would be pursued in a court of law. *Id.*

Clearly, the facts of *Clark* are distinguishable from the instant case. The mere fact that the *Clark v. Jeter* case deals with the constitutionality of a statute of limitations in paternity cases sufficiently distinguishes the decision in that case the instant case. In an action for personal injuries a parent is not faced with conflicting interests that might dissuade the parent from bringing suit on behalf of their minor child. Furthermore, in actions for personal injuries there is no blood test that can eliminate fraudulent claims from the court's docket. The factors that weighed in favor of this Honorable Court's finding that the statute of limitations in *Clark* was unconstitutional are simply not present in the instant case.

The ruling articulated by the Supreme Court in *Clark* is consistent with a finding that statutes which place the rights of children in the hands of their parents are not necessarily unconstitutional. Specifically, the Supreme Court stated that the statute of limitations should "be sufficiently long in duration to present a reasonable opportunity for those with an interest in such children to assert claims on their behalf." *Id.* This standard clearly acknowledges the validity of statutes that vest the rights of children into the hands of their parents.

Moreover, this Honorable Court has found in the cases of *Bellotti v. Baird*, 443 U.S. 622, 99 S. Ct. 3035, 61 L. Ed. 2d 797 (1979) and *Parham v. J.R.*, 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979) that when a fundamental right is not at issue, "parents are expected and allowed to exercise broad decision making authority over their children." *See Strahler v. St. Luke's Hospital*, 706 S.W.2d 7 (Supreme Court, Missouri, en banc, 1986) citing *Bellotti v. Baird, supra*, and *Parham v. J.R., supra*.

The ruling of the Pennsylvania Superior Court in the instant action is not, therefore, in conflict with this Honorable Court's decision in *Clark v. Jeter*. Nor are the decisions of the Pennsylvania Superior Court in *DeSantis v. Yaw*, *supra*, *Petri v. Smith*, *supra*, and *Stein v. Richardson*, *supra*, which involved personal injury sustained by minors. In each of these cases, the Court ruled that the two-year statute of limitations barred the minors' respective claims. The cases of *DeSantis v. Yaw*, *Petri v. Smith*, and *Stein v. Richardson* are distinguishable both in their facts, in that they are not cases involving the issues which arise in paternity suits, as well as on the law, in that they do not discuss the rights of illegitimate children as a class. As in the instant case, the statutes at issue in these cases is subject to the rational basis test as a measure of its constitutionality.

Contrary to Petitioner's assertions, then, there is no conflict between the Pennsylvania Superior Court's decisions in *DeSantis v. Yaw*; *Petri v. Smith* and *Stein v. Richardson* and the instant case and the decision of this Honorable Court in *Clark v. Jeter*. Therefore, the Petitioner has failed to set forth compelling reasons for the grant of certiorari on these grounds, and her Petition for Writ of Certiorari should be denied.

III.

DECISIONS OF THE PENNSYLVANIA SUPREME COURT AND THE PENNSYLVANIA SUPERIOR COURT WITH REGARD TO THE CONSTITUTIONALITY OF A TWO-YEAR STATUTE OF LIMITATIONS AS APPLIED TO MINORS DO NOT CONFLICT WITH DECISIONS OF OTHER STATE COURTS OF LAST RESORT.

Petitioner contends that the decision of the Pennsylvania Superior Court in the instant case conflicts with the decision of the Texas Supreme Court in *Sax v. Votteler*, 648 S.W.2d 661 (Supreme Court, Texas 1983). This argument is without merit, however. The Court in *Sax* did not decide whether the statute at issue was violative of the United States Constitution. *Sax v. Votteler*, 648 S.W.2d at 664. Rather, at issue was whether a statute of limitations as applied to minors violated the open courts provision of the Texas Constitution. *Id.* Similarly, in the cases of *Wasson v. Weiner*, 900 S.W.2d 316 (Supreme Court, Texas 1995) and *Strahler v. St. Luke's*, 706 S.W.2d 7 (Supreme Court Missouri, 1986), the Texas and Missouri Supreme Courts decided the constitutionality of the statutes of limitation in question under the open courts provision of their states' respective constitutions.

While the Petitioner argued below that the statute of limitations applied to this case by the trial court in granting Respondents' respective motions for summary judgment violated the open courts provision of the Pennsylvania Constitution, the highest Court of Pennsylvania did not grant her appeal on that issue. Since the argument that the Pennsylvania statute of limitations at issue is violative of Pennsylvania Constitution is not a compelling federal

question deserving of review by this Honorable Court, *Sax v. Votteler* and the remaining state court cases cited by Petitioner are inapposite. *See Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 50 S. Ct. 451 (1930) (state courts have "supreme power to interpret and declare the written and unwritten laws of the state" and the Supreme Court of the United States' power to review such decisions is limited to state court decisions regarding federal questions) and *Withers v. Ransom Buckley, et al.*, 61 U.S. 84 (1857) (decision as to whether a state statute is violative of a state's constitution is one for the courts of the state in question).

Petitioner also argues that the decisions of the Pennsylvania Courts in the instant case conflict with the courts' decisions in *Adamsky v. Buckeye*, 73 Ohio St. 3d 360, 653 N.E.2d 212 (1995) and *Barrio v. San Manuel*, 143 Ariz. 101, 692 P.2d 280 (1984). In the case of *Adamsky v. Buckeye*, *supra*, the statute of limitations in question was that which dealt with the claims of minors against political subdivisions only. In *Barrio v. San Manuel*, *supra*, the court applied a strict scrutiny analysis to the statute of limitation in question due to a specific clause in its state's constitution setting forth a fundamental right to recover damages in negligence. In the instant case, no such specific clause has been referred to by Petitioner, who has failed to show that the statutes in question in this case are subject to any scrutiny other than that which is applied under the rational basis test. The cases of *Barrio v. San Manuel* and *Adamsky v. Buckeye* are therefore distinguishable from the instant case on both their facts and the law.

Petitioner has failed to establish that this Honorable Court should exercise its certiorari jurisdiction due to what Petitioner perceives to be a conflict between the decisions

of the Pennsylvania courts and the decisions of the courts of last resort in an extremely limited number of other states. The above-referenced cases are distinguishable from the instant case on their facts and the law, and in some cases, do not even involve federal questions. Therefore, no conflict exists for this Honorable Court to resolve, and the Petition for Writ of Certiorari in the instant case should not be granted on such grounds.

IV.

THE PROCEDURAL DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION HAS NO APPLICATION TO THIS CASE BECAUSE THE RUNNING OF A STATUTE OF LIMITATIONS DOES NOT DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW.

A statute of limitations is a procedural mechanism established by the legislature in accord with societal needs and the demands of the judiciary. It is axiomatic that states have an "interest in avoiding the litigation of stale or fraudulent claims." *Clark v. Jeter*, 486 U.S. 456, 108 S. Ct. 1910 (1988). A time bar for the initiation of claims is a staple of judicial economy that legislatures are free to enact. Reasonable procedural requirements such as a statute of limitations do not infringe upon a litigant's procedural due process rights. *Chase Securities Corp. v. Donaldson*, 325 U.S. 304 (1945).

Petitioner has failed to demonstrate that the procedural due process clause of the Fourteenth Amendment is implicated in this case. The loss of a right in a tort action

brought about by the running of a statute of limitations does not impact a vested right. "[N]o one has a vested right in the continued existence of an immutable body of negligence law . . ." *Freezer Storage Inc. v. Armstrong Cork Co.*, 476 Pa. 270, 382 A.2d 715, 720 (1978), *citing Singer v. Sheppard*, 464 Pa. 387, 399, 346 A.2d 897, 903 (1975); *Jackman v. Rosenbaum Co.*, 263 Pa. 158, 106 A. 238 (1919), *aff'd*, 260 U.S. 22, 43 S. Ct. 9, 67 L. Ed. 107 (1922).

Pennsylvania has long recognized the need for limitation periods and acknowledged that these statutes do not interfere with due process rights.

> No one has a vested right in a statute of limitations or other procedural matters. The legislature may at any time alter, amend or repeal such provisions without offending constitutional restraints. So long as there is no omission of a remedy for the enforcement of a right for which a remedy existed when the right accrued, a want of due process is not involved.

Agostine v. Pittsburgh Steel Foundry Corp., 354 Pa. 543, 47 A.2d 680 (1947). Petitioner's due process rights are therefore not violated by the application of the statute of limitations in question. The Petitioner has therefore failed to set forth compelling reasons for the grant of certiorari on these grounds, and her Petition for Writ of Certiorari should be denied.

V.

THE TWO-YEAR STATUTES OF LIMITATIONS FOUND IN 12 P.S. § 34 (NOW REPEALED) AND 42 PA. C.S. § 5524 (NOW REPEALED) ARE IN ACCORD WITH THE SUBSTANTIVE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The test for determining whether a law comports with substantive due process is whether the law is rationally related to a legitimate governmental interest. *Midnight Sessions Ltd. v. City of Philadelphia*, 945 F.2d 667, *rehearing denied, certiorari denied*, 112 S. Ct. 1668, 503 U.S. 984, 118 L. Ed. 2d 389 (1991). Clearly, states have an "interest in avoiding the litigation of stale or fraudulent claims." *Clark, supra.* The two-year statutes of limitations found in 12 P.S. § 34 (now repealed) and 42 Pa. C.S. § 5524 (now repealed) are typical examples of lawfully enacted statutes of limitation designed to avoid the litigation of stale or fraudulent claims in the Commonwealth of Pennsylvania.

Petitioner has failed to set forth compelling reasons for the grant of certiorari on these grounds, and her Petition for Writ of Certiorari should be therefore be denied.

VI.

THE TWO-YEAR STATUTES OF LIMITATIONS FOUND IN 12 P.S. § 34 (NOW REPEALED) AND 42 PA. C.S. § 5524 (NOW REPEALED) AS APPLIED TO MINORS ARE IN ACCORD WITH THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Petitioner's contentions that 12 P.S. § 34 and 42 Pa. C.S.A. § 5524 violate the equal protection clause of the United States Constitution are without merit. The starting point of any equal protection analysis is whether the State has created a classification for the unequal distribution of benefits or imposition of burdens. *Commonwealth v. Parker White Metal Co.*, 512 Pa. 74, 515 A.2d 1358 (1986). The statutes at issue in this case do not provide for the unequal distribution of benefits or imposition of burdens. In its entirety, 12 P.S. § 34 states:

> Every suit hereafter brought to recover damages for injury wrongfully done to the person, in case where the injury does not result in death, must be brought within two years from the time when the injury was done and not afterwards; in cases where the injury does result in death the limitations of action shall remain as now established by law.

1895, June 24, P.L. 236 Section 2 (repealed 1978, April 28, P.L. 202, No. 53, Section 2(a), effective June 27, 1978).

The limitation on actions for personal injury set forth in 12 P.S. § 34 applies equally to all persons. There is no unequal distribution of benefits or imposition of burdens set forth in 12 P.S. § 34, and, therefore, it cannot be overturned on equal protection grounds.

Similarly, 42 Pa. C.S.A. § 5524 provides as follows:

> The following actions and proceedings must be commenced within two years:
>
> * * *
>
> (2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another.

1976, July 9, P.L. 586, No. 142, Section 2, effective June 27, 1978 (Amended, 1982) Dec. 20, P.L. 1409, No. 326, art. II Section 201, effective in 60 days).

Neither 42 Pa. C.S.A. § 5524 nor § 5533 legislate an unequal distribution of benefits or imposition of burdens. In its entirety, prior to amendment, 42 Pa. C.S.A. § 5533, states:

> Except as otherwise provide by statute, infancy, insanity or imprisonment does not extend the time limited by this subchapter for the commencement of a matter.

1978, April 28, P.L. 202, No. 53, Section 10(62), effective June 27, 1978 (Amended, 1984, May 30, P.L. 337, No. 67, Section 1, effective in 30 days)

These statutes acknowledge that limitations on civil actions apply equally to all persons and no class will be afforded special protection unless otherwise mandated by law. There is no unequal distribution of benefits or imposition of burdens set forth in 42 Pa. C.S.A. §§ 5524 or 5533 and therefore, they cannot be overturned on equal protection grounds.

It is respectfully submitted that the statutes at issue do not provide for the unequal distribution of rights or imposition of burdens and, therefore, the equal protection rights of the Petitioner are not at issue. The Petitioner's argument that the statutes in question violate the Equal Protection Clause is without merit, and she has failed to set forth compelling reasons for the grant of certiorari on these grounds. Respondent Vincent Tully M.D. therefore requests that this Honorable court deny the Petition for Writ of Certiorari in the instant case.

CONCLUSION

The Petitioner's arguments in support of the grant of certiorari are without merit. The decisions of the Pennsylvania Superior Court in this case and the cases of *DeSantis v. Yaw*, *supra*; *Petri v. Smith*, *supra* and *Stein v. Richardson*, *supra*, as well as the refusal of the Pennsylvania Supreme Court to grant an appeal in the instant case are not in conflict with this Honorable Court's decision in *Clark v. Jeter*, *supra*. Nor do the above-referenced decisions conflict with the decisions of the highest courts of other states. The two-year statutes of limitations set forth in 12 P.S. § 34 (now repealed) and 42 Pa. C.S. § 5524 (now repealed) do not violate the Petitioner's right to procedural or substantive due process as provided for in the Fourteenth Amendment to the United States Constitution. Nor do the statutes in question violate the Equal Protection Clause of the Fourteenth Amendment, in that they do not provide for the unequal distribution of benefits or imposition of burdens.

The Petitioner has failed to set forth compelling reasons for the grant of certiorari in this case. Respondent Dr. Tully therefore respectfully requests that the Petition for Writ of Certiorari in the instant case be denied.

Respectfully submitted,

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